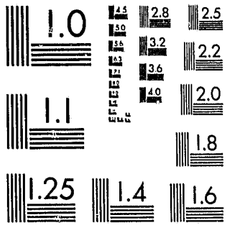

Federal Probation

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All phases of preventive and correctional activities in delinquency and crime come within the fields of interest of FEDERAL PROBATION. The Quarterly wishes to share with its readers all constructively worthwhile points of view and welcomes the contributions of those engaged in the study of juvenile and adult offenders. Federal, state, and local organizations, institutions, and agencies — both public and private — are invited to submit any significant experience and findings related to the prevention and control of delinquency and crime.

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Federal Probation

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This Issue in Brief

The Evolution of Probation: The Historical Contributions of the Volunteer.—In the second of a series of four articles on the evolution of probation, Lindner and Savarese trace the volunteer/professional conflict which emerged shortly after the birth of probation. The authors reveal that volunteers provided the courts with probation-like services even before the existence of statutory probation. Volunteers were also primarily responsible for the enactment of early probation laws. With the appointment of salaried officers, however, a movement towards professionalism emerged, signaling the end of volunteerism as a significant force in probation.

Don't throw the Parole Baby Out With the Justice Bath Water.—Allen Breed, former director of the National Institute of Corrections, reviews the question of parole abolition in light of the experience with determinate sentencing legislation in California, the current crisis of prison overcrowding, and the improvements that have been made in parole procedures in recent years. He concludes that the parole board—while it may currently not be politically fashionable—serves important "safety net" functions and retention of parole provides the fairest, most humane, and most cost-effective way of managing the convicted offender that is protective of public safety.

LEAA's Impact on a Nonurban County.—LEAA provided funds for the purpose of improving the justice system for 15 years. To date, relatively little effort has been made to evaluate the impact of LEAA on the delivery of justice. In this article, Professor Robert Sigler and Police Officer Rick Singleton evaluate the impact of LEAA funds on one nonurban county in Northwestern Alabama. Distribution of funds, retention and impact are assessed. While no attempt has been made to assess the dollar value of the change, the data indicate that the more than one million dollars spent in Lauderdale County did change the system.

Developments in Shock Probation.—Focusing on a widely used and frequently researched probation program, this paper by Professor Gennaro Vito examines research findings in an attempt to clearly identify the policy implications surrounding its continued use.

Family Therapy and the Drug-Using Offender: The Organization of Disability and Treatment in

CONTENTS

a Criminal Justice Context.—The paper describes offenders' behaviors which exacerbate conflict between probation professionals to protect a fragile interpersonal situation within the offender's family. The mirroring of familial conflict by professionals leads to high rates of recidivism whereas the professional's ability to work collaboratively with the offender's family frequently enhances autonomy and more responsible behavior, assert the authors, David T. Mowatt, John M. VanDeusen, and David Wilson. Three modes of interaction characterizing the interface between probation professionals and the offenders' families are described.

Toward an Alternate Direction in Correctional Counseling.—While examining some of the problems in correctional counseling, e.g., authority, resistence to change, etc., this article calls for an alternative to traditional therapies. Dr. Ronald Holmes recognizes the need to move toward a model of counseling which reduces the importance of traditional therapeutic values and stresses the need for humane relationships. This model encourages an equal relationship between the counselor and the client, an examination of conscious determinants of behavior, and a belief in the client's ability to change.

Victim Services on a Shoestring.—The criminal justice system is currently demonstrating more concern about the victims of crime. Robert M. Smith, probation and parole officer for the State of Vermont, writes that although we in corrections oftentimes do not become involved with offenders until long after some crimes were committed, we still can play a significant role with regard to victims. Furthermore, some of these interventions do not require additional resources; rather, it is a matter of rethinking our own attitudes.

Medical Services in the Prisons: A Discriminatory Practice.—This article by Professor James T. Ziegenfuss reviews the provision of medical services in prisons and the growing involvement of the courts. Studies reported in the literature raise serious questions as to the quality and quantity of such care. Traditional approaches would suggest amelioration of the situation by providing more and better care. However, the consideration of alternatives to the present delivery system is examined in this article, as exemplified by the developing drug and alcohol treatment system. Importantly, the resolution of the problem is defined in terms of service system design and redesign. Additional needed research and analytical studies are identified.

Legal Assistance to Federal Prisoners.—Legal Aid Attorney Arthur R. Goussy describes the duties of the visiting attorney to the Federal Correctional Institution, Milan, Michigan from February through October 1981. Commencing in April, a total of 136 interviews were conducted with 126 inmates during visits taking a total of 71 hours. Prison authorities felt this service would assist inmates in: (1) pursuing their criminal cases; (2) coping with prison grievances; and (3) resolving private legal matters. This paper addresses, experientally, these problems and the merits of legal consultation.

Love Canal Six Years Later: The Legal Legacy.—It was August 1978 when the New York State Health Commissioner declared a health emergency at the Love Canal site on the outskirts of Niagara Falls, which ultimately led to the evacuation of nearly 1,000 families. For 5 years, Hooker Chemical and Plastics Corporation had used the 15-acre site to dump 21,800 tons of toxic chemicals until it sold the property to the Niagara School Board in 1953. Since 1978 the Justice Department has initiated a $124.5 million lawsuit against Hooker and New York State has filed suits totalling $835 million, charging Hooker with responsibility for the Love Canal disaster and other illegal dumping in the area. Issues remain, however, in the assessment of legal responsibility in this case. In this paper by Professor Jay Albanese questions of causation, prosecution, sentencing, and prevention are examined to illustrate the difficulty in doing justice in cases involving the scientific and legal issues raised by exposure to hazardous waste.

The Evolution of Probation

*The Historical Contributions of the Volunteer**

BY CHARLES LINDNER AND MARGARET R. SAVARESE**

AS MOST of us already know, probation was brought into existence in this country by a relatively small number of dedicated individuals, most of whom were volunteers. Of course, the very first name that comes to mind is that of John Augustus whose pioneering work in and around Boston during the mid-1800's earned for him the title, "father of probation." But there were other volunteers, both in Massachusetts and other jurisdictions such as New York and Chicago, who followed Augustus and who continued his work, still on a voluntary basis, winning acceptance for probation, in the process and, thus, laying the groundwork for passage of the first official probation laws.

Whereas volunteers had been the undisputed leaders and pioneers during the early stages of the evolution of probation, their role changed radically very shortly after the enactment of probation legislation. Almost inevitably, the advent of publicly paid professional probation officers led to an eventual diminution of both the volunteers' functions and status within the system. In most jurisdictions, a consistent pattern emerged following the creation of a formal, official probation system; as paid probation officers were hired, increased in numbers, and became professionalized, they often concentrated their organizational efforts on the removal of volunteers from the system or, at the very least, on severely limiting the role and functions of volunteers.

In New York State, for example, the trend toward professionalism was evident during the first decade of statutory probation services and, in many instances, publicly paid probation officers were simply substituted for volunteers. Elsewhere, volunteers were subjected to supervision by professional, salaried probation officers, limited in the scope of their duties and responsibilities, and assigned reduced caseloads. Most importantly, a number of attacks on the quality of volunteer work served as a stigma and tarnished the credibility of volunteers as a whole. So strong was the anti-volunteer feeling, as a result, that it would not be until the 1960's that a revival of volunteer services in probation would occur.

Whereas the contributions made by the early volunteers to the development of probation have received considerable attention, the later struggle between volunteers and professionals has been overlooked for the most part. This article is an attempt to explore the various roles played by volunteers at different stages in the evolution of probation culminating in the volunteer/professional conflict and the eventual outcome of that struggle.

THE ROLE OF VOLUNTEERS PRIOR TO THE PASSAGE OF PROBATION LEGISLATION

The years prior to the passage of the statutes legally authorizing probation and the appointment of probation officers could very well be called the "golden years" of voluntary probation services for it was during this period of time that volunteers played their most prominent, fruitful role in both initiating and then developing probation until it became an accepted, well-established practice. Indeed, in many jurisdictions, long before probation received the official sanction of law, volunteers were active in the courts where they provided, on a strictly informal, unofficial basis, a type of assistance which would, much later, be recognized and accepted as the essential core of professional probation practice. The services provided by these early volunteers included both investigations of defendants and informal supervision, for although the courts lacked the ability, at this time, to place an offender under formal probation supervision, the combination of a suspended sentence plus informal supervision was often used as an alternative and served essentially the same purpose.

The Premier Volunteer

Of course, the first and foremost volunteer was John Augustus and his accomplishments in launching probation in this country overshadow the efforts of all other volunteers who labored during this period prior to the existence of a formal probation system. Appropriately credited with being the "father of probation," Augustus was the "first to invent a system, which he termed probation, of selection and supervi-

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***This is the second in a series of four articles on the evolution of probation.**

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volunteer services requires a strong organizational framework so as to insure continuity, interrelationship with professional services, and the supports required for effective service. In addition, it is essential that there be a clear role distinction between the volunteer and professional probation officer. These conditions were simply not present during the early days of statutory probation.

Within only a few years after the enactment of probation legislation, the volunteers' glory as the founding fathers of this innovative system was gone and they were now viewed as outsiders whose time had passed. Flexner, consistently a voice of professionalism, warned in 1910 against the "indiscriminate use of volunteers" and suggested that they be limited to two probation cases at any one time. Following a lengthy evaluation of the use of volunteers on a nationwide basis, he concluded:

> If volunteers are used, the number of probationers such an officer can oversee becomes important; the fewer children given to a volunteer the better. One child, if the system can be held down to it, is better than two, and few volunteers can be found whose time will permit them to look after more than two.[35]

Flexner's criticism, while harsh on the surface, is quite understandable in light of the times. Like other advocates of professionalization, he viewed this process as a vehicle for improved client services, improved worker status, higher income, and greater occupational autonomy. At the same time, volunteers possessing lesser skills, different goals, and often a less intense and less permanent occupational commitment, were seen as a threat and an obstacle to the attainment of professional recognition and status. While the animosity on the part of the professional probation officers toward volunteers was very real and the efforts to eliminate or, at least, diminish the latter were equally real, these attitudes and actions can hardly be viewed as unique to the field of probation. On the contrary, they are common to most fields especially as they go through the process of becoming a distinct, specialized occupation. As Wilensky and Lebeaux state, "All professions are also anti-amateur. Competing practitioners who are not regarded as professionally qualified are condemned."[36]

With increased hiring of salaried probation officers, the fate of the volunteer in probation became apparent. Although they would continue to serve in smaller cities and rural areas for a considerable period of time, their overall influence in probation would rapidly diminish. Ironically, the principal architects of the probation system would not be permitted to worship in the temple of their own creation.

[35] Bernard Flexner, "The Juvenile Court as a Social Institution." *The Survey* (February 5, 1910) : 620.
[36] Harold L. Wilensky and Charles N. Lebeaux, *Industrial Society and Social Welfare* (New York: The Free Press, 1965) : 304.

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"Don't Throw the Parole Baby Out With the Justice Bath Water"

BY ALLEN F. BREED
Director, National Institute of Corrections

FOR OVER a decade American legislators have been busily attempting to cure the crime problem by enhancing penalties for the convicted transgressors. The increased incidence of crime, particularly violent crime, has left substantial portions of the citizenry increasingly fearful for their personal safety, and generally supportive of measures that promise to increase the punishment for law violations. In spite of considerable evidence to the contrary, the judiciary is popularly perceived as too lenient, as being "soft on crime." The public's fear and concern has provided the opportunity for some legislators to bolster political careers by loudly espousing a "tough on crime" crusade that typically translates into increased penalties and mandatory imprisonment for the offenses most feared. Those legislative moderates who question the effectiveness of attempting to reduce crime by locking up more people for longer terms are understandably fearful of overtly resisting the rush to incarceration, lest they, too, be seen as "soft on crime."

Having increased penalties, the tough-on-crime crusaders further scanned the justice apparatus and concluded that those in decisionmaking roles, namely the courts and parole boards, were too lenient in their exercise of the discretion allowed by law, and so moved to reduce or eliminate that discretion. The result has been a national trend toward mandatory and determinate sentencing of statutorily fixed terms that leave little discretion to the sentencing judge and none for parole board members. Interestingly, little attention has been paid to prosecutorial discretion, perhaps because the prosecutors have been generally supportive of the "get tough" stance. It is estimated that 90 to 95 percent of criminal dispositions are determined in the plea bargaining process, and that no more than 5 to 10 percent go to trial. Even in career criminal cases, prosecutorial discretion has allowed over 50 percent of the cases to be screened out prior to trial. Thus, such discretion as has not been preempted by the legislature largely rests with the prosecution. With the effective disposition having been made before the case reaches the probation officer, the significance of his role in making recommendations to the court is drastically reduced, indeed almost eliminated.

A current Bulletin of the Bureau of Justice Statistics reports—"that 46 states have mandatory sentencing laws and 12 states have passed some form of determinate sentencing laws, both of which frequently result in a longer average time served than indeterminate sentences." Under the determinate sentencing statutes in these states, prisoners are now given presumptive or flat sentences which they must serve in full.

From the standpoint of release decisionmaking, parole has been more or less abolished in Arizona, California, Colorado, Connecticut, Florida, Illinois, Indiana, Maine, Minnesota, New Mexico, and North Carolina. With regard to postrelease supervision, parole has only been abolished in Maine but other states are eagerly looking at the cessation of such services as being a way to save money.

With the crime rate unabated, in spite of the tougher penalties, and with more people going to prison for determinate periods that allow for no adjustment by paroling authorities, the inevitable result was easily predictable. Prison population has mushroomed at an increasing rate and 1982 saw the total imprisoned population increase by 11.6 percent after a record increase in 1981 of 12.1 percent. On March 30, 1983, there were 425,678 inmates in Federal and state prisons and some 10,000 prisoners were backed up in local jails awaiting the opening of bed space in the prisons. Forty states are currently under court order or involved in litigation to reduce prison populations.

Crisis in the Largest System

The near catastrophic predicament that can evolve in the rush to incarcerate for longer mandatory terms is perhaps best illustrated in the crisis currently facing the California system. Throughout the seventies the State prison population varied between 20 and 24 thousand, and stood at the high figure at the end of 1980, which incidentally approximates the design capacity of the system. Some 5 years ago the State legislature moved from an indeterminate sentencing pattern to a determinate one; prison terms were mandated for certain offenses; and terms generally were lengthened. In the past 5 years the inmate popula-

tion has soared to 34,500 (about a third over capacity) and is growing at the rate of 100 additional inmates per week. Given a continuation of existing sentencing practices, the population is projected to exceed 50,000 by 1985, and will cross the 60,000 mark by the end of 1988. The 35,000 new beds that such a population will require calls for construction funds exceeding two-and-a-half billion dollars. The $495,000,000 for new prisons that was approved by the voters last year constitutes less than a 20 percent down payment.

Only experienced institution personnel will be aware of the many gross problems that are almost inevitably the byproduct of acute overcrowding—the increase in prison violence as tensions mount; the all-pervasive need for omnipresent concern with prison security; the increased tensions and divisions between inmates and staff that result; the grossly reduced capability for maintaining any kind of stable atmosphere which is conducive to the productive use of program opportunities; the increased idleness as numbers exceed program capacity. As program opportunity capabilities are reduced, all the factors and forces that make for greater criminalization of the inmate population are enhanced, and the failure of the prison mission becomes more assured.

The Attack on the Parole Process

The genesis of the movement to limit or eliminate the authority of parolling authorities, like the move toward increased penalties, dates back to something over a decade, but it emerged from quite different roots. The movement was engineered by a peculiar coalition of liberal prison reformers, conservative get tough on crime politicians, and intellectuals of various stripes, all with different and conflicting goals in mind.

Those to the left of the political spectrum were concerned:

- That the effort to induce prisoners to participate in so-called rehabilitative programs such as AA or group counseling was a kind of phoney game played between the inmate and the Parole Board. Participation in educational or vocational training programs were also suspect since such activities were viewed as coerced, hence by definition ineffective. The dishonest game favored those inmates who could verbalize enthusiasm over the inarticulate.
- They decried, as an infringement of the parolee's civil rights, the requirements for parole reporting, the limitations placed on a parolee's movement or type of employment, and the need to satisfy the sometimes inconsistent and whimsical conditions of parole.
- They protested the parolee's vulnerability to revocation procedures for behavior that was frequently not illegal or criminal and a process that was seen as a gross infringement of rights. There is no question that the violation procedures 10 to 15 years ago tended to be informal, gave the parolee little if any opportunity to defend himself, and lacked most of the accepted "due process" protections.
- They also questioned the value of the parole officer's assistance in helping the parolee to find employment or housing. Indeed, there was little evidence that the parole officer's assistance had any effect on violation rates. The critics argued that the offender had "paid his debt" through his confinement and should be free of further restrictions or constraints. The parole officer's role, it was argued should be restricted to nothing more than offering help when it was requested.
- They often cited the famous *Gideon* vs. *Wainwright* case in Florida, in which several hundred prisoners were released by court order because they had been tried and convicted without benefit of legal counsel. An after the fact analysis revealed that these releasees, who, of course, had no parole supervision or accountability, committed fewer subsequent offenses than did those who were released through the regular parole process which included followup supervision. The information was seen as proof of the counter-productivity of the standard parole procedures, although the significant methodological weaknesses of that study were not noted.
- Opponents of parole pointed out that parole board members were largely political appointees, who may or may not have had some reasonable qualifications for their important decisionmaking role. It was generally agreed that parole boards had little basis on which to judge whether a man was rehabilitated or dangerous. Critics urged that attention be given to the fact that deliberations had very limited visibility, and were essentially devoid of review or appeal procedures. Decision norms or guidelines were typically nonexistent, and those that did exist tended to be informal and unwritten.
- A common complaint voiced by prisoners was the fact that the "term-sets" by board members were frequently postponed for months, even years, and hence the inmate had little notion as to when he might anticipate release. Thus, a prisoner found it difficult to plan either his prison program or his postrelease activity.
- Critics from the political right accused parole boards of releasing dangerous prisoners long before the sentences pronounced by the trial court had been completed. Many tried to correlate the increase in crime during the 1970's with the lenient and liberal positions taken by parole board members.
- Parole boards were intermittently attacked in the press when they ordered the release of some notorious offender involved in an offense of high public interest, even though the time served might be well within existing policy and statutory prescriptions. Such cases, of course, provided yeasty grist for the "let's get tough" protagonists, and frequently figured in legislative moves to increase penalties.
- Liberal intellectuals and reformist corrections practitioners attacked parole as a conservative system in which prisoners, especially those from minority groups were held much longer than their crimes warranted.

The parole board function had thus accrued a multihued host of critics, ranging from organized prisoners and prisoner-service groups to punitive-minded politicians who saw a chance to garner votes by striking a blow for nonfreedom. Out of the welter of sometimes conflicting criticisms, however, was forged a rather unusual partnership of critics to limit or abolish parole board discretion.

Putting the Parole House in Order

In some jurisdictions, fortunately, the plethora of criticism and the threat of statutory encroachment on the parole board function, occasioned some genuine self-scrutiny and a search for corrective measures by those boards. The central reform measure has been the construction and adoption of guidelines for parole decisionmaking. In this enterprise the credit for playing a leadership role would seem to clearly rest with the United States Parole Commission. With the able assistance of Researcher Don Gottfredson and his associates, the Federal Board launched on a several-year undertaking to construct and implement a series of norms for parole-release decisionmaking. The product was initially implemented in 1973 with the formal adoption of the guidelines. The guides are essentially of two dimensions—severity of offense, and assessment of risk (based primarily on previous criminal record). The project first undertook to categorize or classify individual offenses into groups by severity. The projection of degree or extent of risk is predicated on a statistical-actuarial identification of those offender characteristics, or the absence of them, that appear to be correlated with success or failure on parole. The identification of these predictive factors is the product of the analysis of actual experience with large numbers of parolees. Since the initial adoption of parole release guidelines by the U.S. Parole Board in 1973, 16 of the states have adopted similar norms.

The decade's history of reform in the parole release decision process has been paralleled by equally significant changes in parole revocation procedures. Here a series of court decrees were significant in prodding a lethargic bureaucracy toward the development of procedures that gave a reasonable aura of "due process" to revocation actions. The proceedings have been formalized. Allegations of violation made more specific; parolees typically have the chance to respond; and a formal hearing before the parole board is generally standard. There is some evidence of a movement to limit the number of "parole rules" or conditions that provided the basis for numerous "technical" violations short of any overt transgressing of the law. Unevenly enforced, they required of the parolee a level of conduct beyond that imposed on the free citizen, and were sometimes used to effect a return to prison when a law violation was suspected but not subject to proof. The tendency toward limiting their use is certainly overdue, and to be welcomed.

Interestingly the legislative displeasure with parole board operations has not, generally, extended to the parole supervision function or to the staff required to perform it. The determinate sentencing laws that have significantly limited parole decisionmaking authority have typically left the parole field function unchanged. Perhaps the field staff are seen as an additional measure of public protection at a time of seemingly increased public risk.

Parole supervision workloads, however, have grown as prison commitments have grown; but generally the workforce has not kept pace with the caseload. Thus, when the whole parole concept, including the field supervision services, greatly needs to demonstrate its effectiveness, its capacity to do that is being reduced by increasing workloads and decreasing resources.

Discussion

In summary, an untoward series of interrelated developments has produced a continuing crisis in all components of the corrections world from probation through parole. A long-term increase in the incidents of crime, particularly violent crime, has led to a general public demand for some sort of corrective action. Punitively inclined legislators have sought to exploit the public fear by proposing more frequent use of incarceration and longer terms for the convicted. Long-term criticism of the gross disparities existing in sentencing practices from court to court has opened

the way to the usurping of traditional judicial discretion through mandatory and determinate sentencing statutes. The result has been an unprecedented increase in the prison and jail populations. The whole series of developments has transpired at a time of taxpayer revolt and has been exacerbated now by a deep recession, decreasing corrections' ability to cope with an increase in workload. In the process parole boards have been targeted in many states and at the Federal level along with the judiciary, as being possessed with too much discretionary authority, and so legislative reform has sought to seriously limit or eliminate their discretion. While reforms in both judicial and parole board discretion may well have been indicated, the launching of reformative measures in a political climate that is acutely punitive, seriously threatens the stability of a correctional apparatus that is undersized, undermanned, and underfunded. The additional institutional bed space that such a policy requires to meet minimal constitutional standards will burden the taxpayer for decades to come. Discouraging indeed is the prospect to those correctional administrators and staff who must implement and live with these reforms born of paranoia. And there is surely no reason to believe that the turmoil and cost will buy any reduction in recidivism or enhance the public's safety. Actually, studies of the impact of determinate sentencing in a number of states observed that the end of parole was variously expected to: increase deterrence, increase humaneness, decrease discretion, increase prison populations, make penalties more appropriate to the offense, equalize penalties, reduce arbitrariness, increase public protection, reduce harshness, and reduce leniency. After careful review of the literature and the limited research, it is apparent that the only aim that has been consistently accomplished has been an increase in imprisonment.

Recommendations

From a public policy perspective I submit that the growing problem of managing the convicted offender in a way that is fair, humane, and best protective of the public safety is through the retention of the paroling boards' authority to effect release from prison.

The deficiencies in parole board operation that initially invited the attack on board authority have been largely corrected in those states that have moved to the establishment of term-setting guidelines. The fact that 16 states have moved to establish their own guidelines means that jurisdictions with nearly half the potential conditional release populations have moved to "put their house in order." The parole board reform that is indicated now is the development of similar guidelines in the rest of the states.

Further, the past looseness and lack of fairness in parole revocation has been largely corrected through court intervention and voluntary reform. The omnipresent threat of further litigation is perhaps the best motivator available to assure fairness and compliance with reasonable due-process procedures.

The foregoing position, one which is not currently politically popular, is predicated on the following considerations:

1. *Effectiveness*—The superior performance of parolees as compared to mandatory-releases, while of limited magnitude, is still sufficiently great to constitute a strong argument for continued parole board discretion. Sufficient cases sentenced under previous indeterminate procedures exist in those states which have adopted determinate sentencing to allow for comparative studies of the two groups following release from prison. In most of the determinate sentence states the law provides for some form of postrelease supervision, which now seems to average about 1 year. This contrasts with an average period of *parole supervision* of approximately 2 years. In spite of this doubling of the period of exposure to possible revocation or recommitment, studies completed during the past several years clearly indicate that on the average, *the parolees had a "revoke rate" of only 24.8 percent as compared to the mandatory releasees whose return rate was 30.9 percent. This difference in revocation rate is not to be ignored with about one-fourth more of the mandatory releasees in the failure category, if the public's protection is to be the yardstick by which we measure penal programs and policy.* That data would indicate that: Discretionary selection of inmates released coupled with parole supervision reduces criminal behavior of persons released from correctional facilities over mandatory release.
2. *Sentence Disparity Reduction*—I see the paroling procedure when conducted under carefully drafted guidelines, conscientiously followed, as the best method of assuring fairness and consistency in length of time served within the convicted group. With determinate sentences largely the product of a plea bargaining process, the resulting sentence may be more a test of the prosecutor's or the defense counsel's ability as a bargainer than it is a product of dispassionate fact finding and guilt determination. And disparity can result as readily from variations in prosecutorial policy as it can from variation in judicial policy. The parole boards have and can, when operating under adequate guidelines, do much to reduce or eliminate the capriciousness to which the conviction process is open. There continues to be a need for the system of checks and balances that have historically prevailed. Part of the reason for the continuing survival of parole appears to be that the sentencing systems that have replaced it have not proved to be any fairer—more predictable or less confusing.
3. *Opportunity to Reward Inmate Performance*—There is a real need for a system of rewarding superior effort by the inmate beyond the passive avoidance of rule infractions, whether that consists of a bonafide and productive effort to improve skills or educational achievement, or some unusual service to the institutional operation. Numerous parole boards' guidelines provide norms for this adjustment to assure fairness and consistency. It is hard to see how this can have other than a positive influence on institutional stability and administrative support by inmates.
4. *Providing a Population Safety Valve*—While parole boards have not always been sympathetic with prison administrations faced with overcrowding problems, they do provide a possible mechanism for relieving population pressures by subjecting carefully screened inmates to a reduction in time served. For example in a large prison system with 10,000 releases per year a 2-month reduction in time served would translate to 20,000 man (or bed) months. If the average stay were 2 years (roughly the national average) and a reduction were 3 months, a total gain (or saving) of 1,250 beds would result. With new prison construction in the vicinity of $75,000 per bed, the potential saving to the taxpayer is readily apparent. It would clearly seem better if such time reductions were legitimated by statute as is the case in Michigan, Ohio, and Iowa, but with final decision as to release vested in a parole board rather than making emergency releases solely on some arithmetic formula. Clearly, no such pressure release valve can operate where determinate sentencing statutes eliminate parole board discretion.
5. *Enhancing Parole Board Qualifications*—One of the frequent criticisms offered of parole board operations rises from the typically political nature of their appointment and from the fact that qualifications are rarely spelled out in any meaningful way. It would seem probable that the status of parole boards could be significantly enhanced if substantial qualifications were spelled out in law. I would suggest that if parole boards are to exercise the authority in sentence determination that I am urging, they perhaps should meet the same qualifications as do the judges of the felon-level court or have other professional qualifications at a similar level.

Conclusion

In summary, the launching of sentencing law reforms by opportunistic politicians to assuage a national paranoia threatens to wreak havoc upon the Nation's beleagured prison systems. The moves may meet a public demand for retribution but offer very little hope of reducing the threat to public safety. The fallout will almost surely be a further deterioration in an already highly inadequate system of jails and prisons. The parallel attack on a parole board system that has made significant steps in self-reform, seriously threatens a major population relief valve. And finally, the parolee supervision system that produces a modest 25 percent revocation-recommitment record over an average 2-year period of supervision would certainly seem to warrant legislative and public support. Very few correctional programs can match that accomplishment.

And so I urge public policy formulators of all varieties to recognize the self-defeating nature of determinate and mandatory sentencing statutes, to recognize the falseness of the corrective promise they hold out, and to recognize the increasingly unmanageable nature of the problems imposed on the jails and prisons of America. In the face of such recognition—to desist from further use of such practices and start undoing the damage already done by returning discretion to the judiciary and to the paroling authorities.

Discretion is a legitimate and sensible element in the criminal justice decisionmaking process. It provides for equity, fairness and justice and when necessary provides a safety valve for an overworked system. Discretion is used extensively at every decision point from arrest to sentencing and there is little justification to limit the professional use of such authority at the corrections end of the continuum. One can understand the reasons for reform of the inequities that previously existed in the parole decision process just as there continues to be the need to standardize through guidelines the wide discretion and often gross inequities that currently exist in the decisions made by police, prosecutors, and judges. The effort to reduce discretion by eliminating parole has created a situation where there is just as much discretion in the system as ever. It's just been moved back to a less visible, less measurable point. In our zeal to reform the justice system, let's not destroy an element in the decision process that is healthy—sensible and appropriate. In other words—*Let us not be guilty of throwing the parole baby out with the justice bath water!*

END